

February 19, 2015

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O’Rielly
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: GN Docket No. 14-28

Dear Chairman and Commissioners:

We write as civil rights and reform organizations today to praise the Chairman’s recent description of the proposed net neutrality rules and highlight an important issue. Using Title II with strong open Internet rules is a testament to the Commission’s policy-making process and listening to the millions of people in the U.S. who sought those protections. Title II will ensure the best safeguards founded on the best legal authority to withstand any court challenges.

We believe the proposed rules as outlined by the Chairman will serve all people and, most important, serve people of color and other vulnerable communities who do not yet access high speed broadband at the same rates as the majority population, and who rely disproportionately on mobile access.

In the last few months, a specific type of discrimination—the practice of zero rating, which exempts some applications or online uses from users’ monthly data caps—has been held up as possibly beneficial to these populations. We write to express our concern with the practice and to encourage the Commission to prohibit them. In particular, we ask that the Commission prohibit zero-rating because it suffers from the same flaws as other practices that will be proscribed under the forthcoming net neutrality rules.¹

At its heart, zero rating is a form of prioritization that privileges some content over other content. Zero rating is predicated on the presumption that bandwidth is scarce and that some content must be privileged in light of that scarcity. We reject the scarce data presumption. In fact, just as paid fast lanes would encourage broadband providers to offer slow lanes in order to entice content providers to pay for faster connections, zero rating, with its underlying reliance on data caps, would encourage lower data caps to incent payments for zero-rating.²

¹ While we have concerns about all forms of zero-rating, we support the approach proposed by Prof. von Schewick to ban two types of zero-rating: (1) zero-rating in exchange for edge-provider payment and (2) zero-rating of selected applications within a class of similar applications without charging edge providers. See Letter from Prof. von Schewick to Marlene Dortch, GN Dockets 09-191, 14-28 (filed Feb. 18, 2015).

² See e.g. Rewheel, “In the Netherlands, where zero-rating is banned, KPN just doubled (free of charge) the mobile internet volume caps to encourage a carefree usage of its online videos,” Feb. 6, 2015, available at http://dfmonitor.eu/downloads/Banning_zerorating_leads_to_higher_volume_caps_06022015.pdf.

Zero rating directed toward low-income communities will not benefit those communities. Specifically, in this case, zero rating:

- Is price discrimination, unfairly making certain applications, or classes of applications, more expensive for consumers to access;³
- Is predatory because it provides low-income people with subpar or limited access;
- Normalizes and codifies inequality by making it acceptable for the market to permanently divide the Internet by class;
- Advantages entrenched edge providers, thereby creating higher barriers to finding an audience for independent entrepreneurs and entrepreneurs of color that have yet to reach mainstream edge provider status;
- Can falsely equate access to a single application with access to the full Internet, thereby failing to expose low-income users to the full benefits of the Internet;⁴ and
- Permits corporations to determine paternalistically for low income people the applications or content to which they will receive preferred or unlimited access.

Our groups very much support efforts to expand adoption of broadband access, but we do not believe zero-rating will achieve that objective. We offer again our respect and support for the work the Commission staff and leadership have completed in this Herculean undertaking, your willingness to hear from the civil rights and reform communities, and the incredible progress that has been made in this docket thus far. We look forward to a robust net neutrality order and work ahead to implement that order.

Sincerely,

18MillionRising.org
Access
Black Alliance for Just Immigration
Center for Media Justice
ColorOfChange.org
Common Cause
Fight for the Future
Media Action Grassroots Network
Million Hoodies
National Hispanic Media Coalition
The Utility Reform Network
United Church of Christ, OC Inc.

³ Other countries have prohibited zero-rating for this reason. See, e.g., David Myer, “In Chile, mobile carriers can no longer offer free Twitter, Facebook or WhatsApp,” GigaOm (May 28, 2014) available at <https://gigaom.com/2014/05/28/in-chile-mobile-carriers-can-no-longer-offer-free-twitter-facebook-and-whatsapp/>; Netherlands: Two telcos fined for net neutrality violations (Feb. 11, 2015) available at <https://edri.org/netherlands-two-telcos-fined-for-net-neutrality-violations/>.

⁴ Leo Mirani, “Millions of Facebook Users Have No Idea They’re Using the Internet,” Quartz (Feb. 9, 2015); available at <http://qz.com/333313/millions-of-facebook-users-have-no-idea-theyre-using-the-internet/>.